

AMENDED IN SENATE JULY 6, 1998
AMENDED IN ASSEMBLY JANUARY 26, 1998
AMENDED IN ASSEMBLY APRIL 16, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 726

Introduced by Assembly Member Baugh
(Principal ~~author~~ *coauthors*: Assembly Members Caldera,
Havice, and Napolitano)
(Coauthors: Assembly Members Ackerman, Baldwin,
Bordonaro, Bowler, Campbell, Margett, Miller, Morrissey,
Morrow, Oller, Ortiz, Runner, Thompson, and Woods)

February 26, 1997

An act to amend Sections 318.5 and 318.6 of the Penal Code, relating to adult entertainment.

LEGISLATIVE COUNSEL'S DIGEST

AB 726, as amended, Baugh. Sexually oriented businesses: local regulation.

Under existing law, the legislative body of any county or city may regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of sexually oriented businesses, as specified. Existing law separately provides that nothing in specified provisions shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if the ordinance directly regulates the exposure of the genitals or buttocks of or the breasts of any

person who acts as a waiter, waitress, or entertainer, as specified.

Existing law further provides that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance relates to any live acts, demonstrations, or exhibitions occurring in public places, places open to the public, or places open to public view and involve the exposure of specified body parts and if the ordinance prohibits an act or acts that are not expressly authorized or prohibited by existing law. Existing law exempts from these provisions any theater, concert hall, or similar establishment which is primarily devoted to theatrical performances.

~~This bill would delete the exemption for theaters, concert halls, and similar establishments. The bill would further provide that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance prohibits the presentation of live, nude performances at any adult or sexually oriented business, as defined, or if that ordinance prohibits any patron from directly paying or giving any gratuity to any dancer or entertainer, or prohibits any dancer or entertainer from soliciting any pay or gratuity from any patron, in any adult or sexually oriented business or similar establishment. The bill would declare that its provisions shall not be interpreted to require the adoption of any ordinance, but is instead intended to be declaratory of existing law, and that it shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment in the manner, and to the extent permitted by, the United States Constitution and the California Constitution. *The bill also would specify that these provisions shall not be construed to apply to any adult or sexually oriented business that has been adjudicated by a court of competent jurisdiction to be, or by action of a local body allowing the business to operate on or before July 1, 1998, as, a theater, concert hall, or similar establishment primarily devoted to theatrical performances.*~~

This bill would make findings and declarations relating to the regulation of sexually oriented businesses including that



any city, county, or city and county may prohibit live nude performances in adult or sexually oriented businesses, consistent with the legislative body's authority to regulate these businesses to the extent permitted by the United States and California Constitutions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as
2 follows:
3 (a) The presentation of live nude entertainment
4 within adult or sexually oriented businesses ~~creates~~ *may*
5 *be found to create* undesirable secondary effects
6 including, but not limited to, an increase in criminal
7 activities such as prostitution and drug dealing in the
8 vicinity of the property on which the entertainment is
9 being provided.
10 ~~(b) The Legislature acknowledges that in Barnes v.~~
11 ~~Glen Theatre, Inc. (1991) 501 U.S. 560, 115 L. Ed. 2d 504,~~
12 ~~1115 Ct. 2456, the United States Supreme Court upheld as~~
13 ~~constitutional a prohibition against live nude~~
14 ~~performances occurring within adult entertainment or~~
15 ~~sexually oriented businesses as a means to reduce or~~
16 ~~eliminate undesirable secondary effects.~~
17 ~~(c) The solicitation or payment of money or gratuities~~
18 ~~by and between patrons and entertainers in sexually~~
19 ~~oriented businesses is an inducement to, and often results~~
20 ~~in, disorderly conduct, including, but not limited to, lewd~~
21 ~~or dissolute conduct, acts of prostitution, or illicit dealing~~
22 ~~of controlled substances.~~
23 ~~(d)~~
24 (b) This act shall not be construed to require the
25 adoption of any ordinance, but is instead intended to be
26 declaratory of existing law authorizing cities and counties
27 to adopt these ordinances.
28 ~~(e)~~
29 (c) This act shall not be construed to preempt the
30 legislative body of any city or county from regulating

1 adult or sexually oriented businesses or similar
2 establishments in the manner, and to the extent
3 permitted by the United States Constitution and the
4 California Constitution.

5 SEC. 2. Section 318.5 of the Penal Code is amended to
6 read:

7 318.5. (a) Nothing in this code shall invalidate an
8 ordinance of, or be construed to prohibit the adoption of
9 an ordinance by, a county or city, if that ordinance
10 directly regulates the exposure of the genitals or buttocks
11 of any person, or the breasts of any female person, who
12 acts as a waiter, waitress, or entertainer, whether or not
13 the owner of the establishment in which the activity is
14 performed employs or pays any compensation to that
15 person to perform the activity, in an adult or sexually
16 oriented business. For purposes of this section, an “adult
17 or sexually oriented business” includes any establishment
18 that regularly features live performances which are
19 distinguished or characterized by an emphasis on the
20 exposure of the genitals or buttocks of any person, or the
21 breasts of any female person, or specified sexual activities
22 that involve the exposure of the genitals or buttocks of
23 any person, or the breasts of any female person.

24 (b) *The provisions of this section shall not be*
25 *construed to apply to any adult or sexually oriented*
26 *business, as defined herein, that has been adjudicated by*
27 *a court of competent jurisdiction to be, or by action of a*
28 *local body such as issuance of an adult entertainment*
29 *establishment license or permit allowing the business to*
30 *operate on or before July 1, 1998, as, a theater, concert*
31 *hall, or similar establishment primarily devoted to*
32 *theatrical performances for purposes of this section.*

33 This section shall be known and may be cited as the
34 “Quimby-Walsh Act.”

35 SEC. 3. Section 318.6 of the Penal Code is amended to
36 read:

37 318.6. (a) Nothing in this code shall invalidate an
38 ordinance of, or be construed to prohibit the adoption of
39 an ordinance by, a city or county, if that ordinance relates
40 to any live acts, demonstrations, or exhibitions occurring

1 within adult or sexually oriented businesses and involve
2 the exposure of the genitals or buttocks of any participant
3 or the breasts of any female participant, and if that
4 ordinance prohibits an act or acts which are not expressly
5 authorized or prohibited by this code.

6 ~~(b) Nothing in this code shall invalidate an ordinance~~
7 ~~of, or be construed to prohibit the adoption of an~~
8 ~~ordinance by, a city or county, if that ordinance prohibits~~
9 ~~the presentation of live nude performances at any adult~~
10 ~~or sexually oriented business located within the~~
11 ~~jurisdiction of the local agency. This section shall not be~~
12 ~~interpreted to require the adoption of any ordinance, but~~
13 ~~is instead intended to be declaratory of existing law~~
14 ~~authorizing the adoption of these ordinances by cities and~~
15 ~~counties.~~

16 ~~(c) Nothing in this code shall invalidate an ordinance~~
17 ~~of, or be construed to prohibit the adoption of an~~
18 ~~ordinance by, a city or county, if that ordinance prohibits~~
19 ~~any patron from directly paying or giving any gratuity to~~
20 ~~any dancer or entertainer, or prohibits any dancer or~~
21 ~~entertainer from soliciting any pay or gratuity from any~~
22 ~~patron, in any adult or sexually oriented business or~~
23 ~~similar establishment.~~

24 ~~(d)~~

25 *(b) For purposes of this section, an “adult or sexually*
26 *oriented business” includes any establishment that*
27 *regularly features live performances which are*
28 *distinguished or characterized by an emphasis on the*
29 *exposure of the genitals or buttocks of any person, or the*
30 *breasts of any female person or sexual activities that*
31 *involve the exposure of the genitals or buttocks of any*
32 *person, or the breasts of any female person.*

33 ~~(e)~~

34 *(c) The provisions of this section shall not be construed*
35 *to apply to any adult or sexually oriented business, as*
36 *defined herein, that has been adjudicated by a court of*
37 *competent jurisdiction to be, or by action of a local body*
38 *such as issuance of an adult entertainment establishment*
39 *license or permit allowing the business to operate on or*
40 *before July 1, 1998, as, a theater, concert hall, or similar*

1 *establishment primarily devoted to theatrical*
2 *performances for purposes of this section.*

3 (d) This section shall not be construed to preempt the
4 legislative body of any city or county from regulating an
5 adult or sexually oriented business, or similar
6 establishment, in the manner and to the extent permitted
7 by the United States Constitution and the California
8 Constitution.

